

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

ORDER

Rakma Vs. M/s.Karadia Motors & ors.

S.B.CIVIL MISC. APPEAL NO.80/1993

Against the award dated 11.11.1992
made by the Motor Accidents Claims
Tribunal, Banswara in Claim Case
No.60/1991

Dated : 13th July 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Mahendra Trivedi for the appellant

Mr.B.S.Rajpurohit)
Mr.Dhanpat Choudhary) for the respondents

BY THE COURT:

This is claimant's appeal against the award dated 11.11.1992 made by the Motor Accidents Claims Tribunal, Banswara in Claim Case No.60/1991 seeking enhancement over the amount of Rs.58,000/- awarded as compensation by the Tribunal to the claimant-appellant on account of accidental death of his wife Smt.Radha.

Brief facts relevant for determination of the questions involved in this appeal are that the accident in question occurred at 10.30 a.m. on 13.05.1991 at village Amli Ota.

Smt.Radha wife of the claimant-appellant was traveling in a bus bearing registration No. RJB 6777 driven by non-applicant No.3 Rajendra belonging to non-applicant No.1 M/s. Karadia Motors and insured with non-applicant No.2 Oriental Insurance Company Ltd. While the deceased Smt.Radha was in the process of alighting from the said bus at its stoppage at Amli Ota, the driver started the bus and moved on that resulted in the deceased Smt.Radha falling down, sustaining several injuries and she succumbed to those injuries. The claimant, husband of deceased, claimed compensation with the submissions that deceased was 20 years of age and was earning about Rs.22/- per day by labour and was contributing to the claimant Rs.460/- per month. Quantifying the losses, the claimant made a claim of Rs.4,82,000/-. The non-applicants No.1 and 3 took the defence that the accident occurred for the negligence of the deceased herself and submitted that the bus was insured with the non-applicant No.2 and liability towards compensation was that of the insurer. The insurer on the other hand while denying the claim averments submitted that the vehicle owner had not complied with the terms of the policy and one Shri Rajesh was the owner of the bus whereas its ownership had been transferred to Karadia Motors on 23.03.1991 and, therefore, the insurer was entitled to be exonerated.

The Tribunal has held the accident to have occurred for the negligence of the bus driver and has also held the insurer liable to satisfy the award.

Taking up quantification of compensation, learned Judge of the Tribunal referred to the submission of the claimant that the deceased was 20 years of age and was earning Rs.22/- per day wages. Learned Judge observed that the claimant was 22 years of age and would contract second marriage and would start getting contribution from the second wife. Then, the learned Judge observed that at the time of her death, deceased was not having any child but was likely to bear children in future and a part of her wages would have been diverted to the children. Learned Judge assumed that she could have worked for 15 days in a month earning Rs.330/- per month and would have contributed Rs.100/- per month to the claimant. Learned Judge took annual loss at Rs.1200/- and then multiplied it by 40 taking that the deceased was capable of working upto 60 years of age and arrived at a pecuniary loss figure of Rs.48,000/-. Learned Judge further allowed Rs.7000/- towards loss of consortium and Rs.3000/- funeral expenses and thereby made an award of Rs.58,000/- in favour of the claimant.

Assailing the award aforesaid, learned counsel for the appellant Mr.M.Trivedi has contended that learned Judge of

the Tribunal has been seriously in error in not making calculation of a just compensation on the basis of relevant principles and the award of Rs.58,000/- remains grossly inadequate and deserves suitable enhancement. Mr. B.S.Rajpurohit learned counsel appearing for the respondent-insurer has vehemently opposed and submitted that the learned Tribunal has rightly awarded the compensation of Rs.58,000/- and no case for enhancement is made out

Having heard learned counsel for the parties and having perused the record, this Court is clearly of opinion that the award made in the present case remains grossly inadequate on its quantification of compensation and deserves suitable enhancement.

The learned Judge has assumed the deceased to be capable of working only for 15 days in a month being a lady who is also required to attend to the household. The consideration cannot be said to be correct for the purpose of estimation of expected income and loss thereof. Even on a conservative estimate, there seems no justification for not taking average wages at least for 25 days in a month and in the circumstances of the case, this Court is of opinion that looking to the age of the deceased of 20 years, a reasonable figure of Rs.550/- per month as average wage earning could be adopted. The consideration that she would have diverted a

part of her income to the children also cannot be countenanced for depriving a just compensation to the claimant. The likelihood of her begetting children and then contributing a part of her income for them is not ruled out but such contribution and such diversion of her income would have been directly to the family consisting of the claimant and the deceased and would have been directly to the benefit of the claimant and his family; and the claimant cannot be deprived of reasonable compensation towards the loss of expected contribution. The deceased with the claimant and the expected children would have formed a family and her spending on the children would have enured to the benefit of the family. Such likely contribution cannot be simply deducted while calculating the loss but on the contrary, the same deserves to be added for arriving at a figure of just compensation.

Having regard to the overall circumstances of the case, this Court is of opinion that after providing for one third as personal expenditure of the deceased, from out of her earning of Rs. 550/- per month, she was likely to contribute Rs.366/- per month to the claimant and, therefore, a multiplicand of Rs.4392/- per annum (366×12) deserves to be adopted. The deceased was about 20 years of age and was married to the claimant. Therefore, a reasonable multiplier of 17 deserves to

be applied and thereby pecuniary loss stands at Rs.74,664/-, rounded up to Rs.75,000/-. The Tribunal has allowed only Rs.7000/- as loss of consortium to the claimant and in view of the young age of the claimant, an amount of Rs.10,000/- deserves to be allowed towards loss of consortium. Further amount of Rs.3000/- allowed towards funeral expenses deserves to be retained. The claimant is, therefore, entitled for a compensation amount of Rs.88,000/- (Rs.75,000/- + Rs.10,000/- + Rs.3000/- = Rs.88,000/-) as against the award made by the Tribunal of Rs.58,000/-. The award, therefore, deserves modification and the claimant deserves to be allowed a further sum of Rs.30,000/-.

So far rate of interest is concerned, the Tribunal has awarded interest at the rate of 12% per annum. However, in view of the amount of compensation being enhanced in this appeal, it is considered appropriate that the claimant be allowed interest at the rate of 9% per annum from the date of filing of claim application on the enhanced amount of Rs.30,000/-.

As a result of the aforesaid, this appeal succeeds and is partly allowed. The impugned award dated 11.11.1992 is modified and the claimant is further awarded an amount of Rs.30,000/- with interest at the rate of 9% per annum from the date of filing of the application. It shall be required of the

respondent No.2 to make deposit of the amount under this modified award within 30 days from today with the Tribunal. Upon deposit, half of the amount so deposited may be paid cash to the claimant and the remaining be invested in a Monthly Saving Scheme of Post Office for a minimum period of six years. Parties are left to bear their own costs of this appeal.

(DINESH MAHESHWARI),J.

MK